



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

JAN 09 2002

CERTIFIED MAIL 7000 0520 0022 2561 8976  
RETURN RECEIPT REQUESTED

Mr. W. T. Eckert  
Power and Mining Manager  
Alcoa, Inc.  
P.O. Box 472  
Rockdale, Texas 76567

Re: Notice of Violation Issued to Alcoa, Inc, Rockdale Operations

Dear Mr. Eckert:

On May 24, 2001, the Texas Natural Resource Conservation Commission (TNRCC) Field Operations Division requested documents regarding the Sandow Betterment Program. The documents were provided by Alcoa for review on July 24, 2001. The TNRCC and United States Environmental Protection Agency (EPA) reviewed the information in order to evaluate compliance with applicable air quality requirements. During the review, certain outstanding alleged violations were identified. EPA is now informing Alcoa by the enclosed Notice of Violation, that it is operating and has operated its plant located in Rockdale, Texas, in violation of applicable air pollution control requirements. Enclosed is a copy of the Notice of Enforcement issued by TNRCC.

If you have any legal questions regarding this notice, please contact Victoria Johnson at 214-665-7569. Technical questions can be directed to Raymond Magyar at 214-665-7288.

Sincerely yours,

A handwritten signature in black ink, which appears to read "Samuel Coleman", is written over a printed name.

Samuel Coleman, P.E.

Director  
Compliance Assurance and  
Enforcement Division

Enclosures

cc: Randy R. Waclawczyk  
Environmental Superintendent  
Alcoa, Inc.

Lawrence R. Purtell  
Executive Vice President and General Counsel  
Alcoa, Inc.

Jeff Saitas  
Executive Director  
Texas Natural Resources Conservation Commission

Anna Dunbar, Regional Director  
TNRCC Region 9

Salal Tahiri, Air Section Manager  
TNRCC Region 9

Zoe Rascoe, Director  
Field Operations Division  
TNRCC Austin

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

**IN THE MATTER OF:**

Alcoa, Inc.

Proceedings Pursuant to  
Section 113(a) of the  
Clean Air Act,  
42 U.S.C. § 7413(a)

**Notice of Violation**

**NOTICE OF VIOLATION**

This Notice of Violation ("NOV") is issued to Alcoa, Inc. ("Alcoa") for violations of the Clean Air Act, as amended ("Act"), 42 U.S.C. §§ 7401-7671q, at Alcoa's Rockdale Operations facility. Alcoa has embarked on a program of modifications intended to extend the useful life, regain lost generating capacity, and/or increase capacity at its lignite-fired power plant, the Sandow Power Plant, which generates electricity primarily for use at Alcoa's aluminum smelter at the Rockdale Operations facility.

Commencing at various times since 1982 and continuing to today, Alcoa modified and operated certain boiler units at the Sandow Power Plant without obtaining Prevention of Significant Deterioration ("PSD") permits authorizing construction of physical modifications to the units and operation of the modified units, as required by the PSD provisions set out in Sections 160 through 169B of the Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. § 52.21, as incorporated into the Texas State Implementation Plan ("SIP") pursuant to 40 C.F.R. § 52.2303. In addition, for each of these physical modifications at the Sandow Power Plant, Alcoa operated the modified units without installing pollution control equipment required by the Act and the Texas SIP. These violations of the PSD requirements have resulted in the release of massive amounts of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), and particulate matter ("PM") into the environment. Until these violations are corrected, Alcoa will continue to release massive amounts of illegal SO<sub>2</sub>, NO<sub>x</sub>, and/or PM into the environment.

This NOV is issued pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1). Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this Notice has been delegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

**STATUTORY AND REGULATORY BACKGROUND**

1. When the Clean Air Act was passed, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of

Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), “the statutory scheme intends to ‘grandfather’ existing industries; but . . . this is not to constitute a perpetual immunity from all standards under the PSD program.” Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever a unit is proposed to be modified in such a way that its emissions may increase.

2. The New Source Review (“NSR”) provisions of Parts C and D of Title I of the Clean Air Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. To obtain the required permit, the source must agree to install the Best Available Control Technology (“BACT”) for an attainment pollutant or achieve the Lowest Achievable Emission Rate (“LAER”) in a nonattainment area.
3. The statutory and regulatory requirements for PSD and the Texas SIP prohibit construction or operation of a major modification of a major stationary source in an attainment area without first obtaining a PSD permit under 42 U.S.C. §§ 7470-7492 and 40 C.F.R. 52.21. Pertinent provisions of 40 C.F.R. § 52.21 have been incorporated into the Texas SIP pursuant to 40 C.F.R. § 52.2303.
4. The PSD provisions in paragraph 3 are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. § 7410 and 7413.

### **FACTUAL BACKGROUND**

5. Alcoa owns and operates the Sandow Power Plant in Milam County, southwest of Rockdale, Texas. The Sandow Power Plant produces electricity from three steam-generating boilers, designated as Sandow Units 1, 2, and 3.
6. At all times since the 1970s, the Sandow Power Plant was located in an area that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO<sub>x</sub>, SO<sub>2</sub>, and PM.
7. The Sandow Power Plant emitted or had the potential to emit at least 100 tons per year of NO<sub>x</sub>, SO<sub>2</sub>, and/or PM and is a major stationary source under the Act.

### **VIOLATIONS**

8. On various occasions between 1982 and the date of this Notice, Alcoa made modifications, as defined in 40 C.F.R. § 52.21 and the Texas SIP, at the Sandow Power Plant. Alcoa initiated the Sandow Betterment Program whose purpose, according to Alcoa’s statements, was to restore the three units to their original generating capacity and extend the useful life of the power plant for another 30 years. These modifications included, but are not

limited to, the following individual modifications or projects: modifying the lignite dryers, replacing feed conveyors, adding cross conveyers, upgrading the water deareator system, upgrading boiler water pumps, replacing fuel feed pumps, modifying the ash handling system, modifying the slag handling system, replacing windboxes and burners with a modified design, replacing the economizer header on boilers 1 and 3, replacing the entire economizer on boiler 2, adding additional sootblowers to the boilers, and adding additional sootblower compressor capacity.

9. For each of the modifications that occurred at the Sandow Power Plant, Alcoa failed to obtain a PSD permit pursuant to 42 U.S.C. §§ 7470-7492 and 40 C.F.R. § 52.21 and the Texas SIP.
10. Among the modifications made at the Sandow Power Plant, many do not fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii) because the modifications were an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a longer useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In some instances, the original component was replaced with a component that was substantially redesigned. That the "routine maintenance, repair and replacement" exemption does not apply to such capital expenditures was known to the regulated community since at least 1988 when EPA issued a widely publicized applicability determination regarding modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990, Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).
11. None of the modifications at the Sandow Power Plant fall within the exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f) for an "increase in the hours of operation or in the production rate." This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the regulated community since at least 1988 when EPA issued a widely publicized applicability determination regarding modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).
12. These modifications resulted in a significant net emissions increase from the Sandow Power Plant of NO<sub>x</sub>, SO<sub>2</sub>, and/or PM. See 40 C.F.R. § 52.21(b)(3)(i).
13. Therefore, Alcoa violated and continues to violate the PSD requirements found at 42 U.S.C. §§ 7470-7492, 40 C.F.R. § 52.21, by constructing and operating modifications at the Sandow Power Plant without the necessary permit required by the Texas SIP and by operating the units without meeting emission limits that would have been imposed by the permitting process.

14. Each of these violations exists from the date of start of construction of the modification until the time that Alcoa obtains the appropriate PSD permit and operates the necessary pollution control equipment to satisfy the requirements of 42 U.S.C. §§ 7470-7492, 40 C.F.R. § 52.21 and the Texas SIP.

### ENFORCEMENT

Section 113(a) (1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator of EPA may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation before January 30, 1997, and no more than \$27,500 per day for each violation after January 30, 1997.

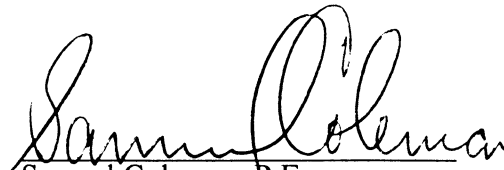
### OPPORTUNITY FOR CONFERENCE

Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this Notice, and the request for a conference or other inquiries concerning this Notice should be made in writing to:

Victoria Johnson (6RC-M)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

If you have technical questions regarding the violations cited herein, you may call Raymond Magyar at 214-665-7288.

9 Jan 2002  
Date

  
Samuel Coleman, P.E.  
Director  
Compliance Assurance and  
Enforcement Division

Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Kathleen Hartnett White, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

January 9, 2002

**CERTIFIED MAIL 7099 3220 0002 7149 9363**  
**RETURN RECEIPT REQUESTED**

Mr. W.T. Eckert  
Power and Mining Manager  
ALCOA, Incorporated  
P.O. Box 472  
Rockdale, Texas 76567-0472

Re: Notice of Enforcement for New Source Review Level 3 Investigation at  
ALCOA, Inc., Off Route 79, FM 1786, Milam County  
TNRCC ID No. MM-0001-T

Dear Mr. Eckert:

On May 24, 2001, the Texas Natural Resource Conservation Commission's (TNRCC's) Field Operations Division requested documents regarding the Sandow Betterment Program. The documents were provided for review on July 24, 2001. The TNRCC and the United States Environmental Protection Agency (EPA) reviewed the information in order to evaluate compliance with applicable air quality requirements. During the review, certain outstanding alleged violations were identified. Enclosed is a summary which lists the results of that review. In addition to this notice, you will be receiving a Notice of Violation from EPA Region 6 (copy attached). The TNRCC and EPA intend to pursue this matter as a joint enforcement action.

In the listing of alleged violations, we have cited applicable requirements, including TNRCC rules. To obtain a copy of the applicable TNRCC rules, you may contact any of the sources listed in the enclosed brochure entitled "Obtaining TNRCC Rules." Copies of applicable federal regulations may be obtained from either of the following offices:

U.S. Government Printing Office  
Texas Crude Building  
801 Travis Street  
Houston, Texas 77002  
713/228-1187 (phone)

U.S. Government Printing Office  
Room 1C-50 - Federal Building  
1100 Commerce Street  
Dallas, Texas 75242  
214/767-0076 (phone)

Mr. W. T. Eckert  
Page 2  
January 9, 2002

Re: Notice of Enforcement for New Source Review Level 3 Investigation at ALCOA, Inc.

The Legislature has granted the TNRCC enforcement powers to ensure compliance with environmental regulatory requirements. Because of the seriousness of the alleged violations, enforcement action has been initiated. Additional violations may be cited upon further review. In order to address the outstanding alleged violations, the TNRCC encourages immediate action.

Should you require further assistance, please feel free to contact me or Ms. Zoe Rascoe, P.E., Director of the TNRCC's Field Operations Division, (MC 174) at (512) 239-0448.

Sincerely,



Mark R. Vickery, Deputy Director  
Office of Compliance and Enforcement

MRV/DE/dc

Enclosures: Summary of Investigation Findings  
*Obtaining TNRCC Rules*

cc: Randy Waclawczyk, Plant Environmental Superintendent, Power and Mining, ALCOA  
Lawrence R. Purtell, Executive Vice President and General Counsel, ALCOA  
Gregg Cooke, Regional Administrator, EPA Region 6  
Sam Coleman, Director of Compliance Assurance and Enforcement, EPA Region 6  
CT Corp. Systems



**SUMMARY OF INVESTIGATION FINDINGS**  
**ALCOA, Inc.**  
**Sadow Power Plant, Rockdale, Texas**  
**TNRCC ID No. MM-0001-T**

**OUTSTANDING ALLEGED VIOLATION**

Texas Health and Safety Code § 382.085 and its predecessor versions, which prohibits, among other things, the construction and operation of a major modification at a major stationary source in an attainment area without first obtaining a Prevention of Significant Deterioration (PSD) permit as required by 30 Texas Administrative Code § 116.160 and its predecessor versions.

On a number of occasions between 1982 and the date of this notice, ALCOA made modifications as defined by 40 CFR 52.21. ALCOA initiated the Sadow Betterment Program whose purpose, according to ALCOA's statements, was to restore ALCOA's Sadow Units 1, 2, and 3 to their original generating capacity and extend the useful life of the power plant for another 30 years. These modifications included, but are not limited to, the following individual modifications or projects: modifying the lignite dryers, replacing feed conveyors, adding cross-conveyers, upgrading the water deaerator system, upgrading boiler water pumps, replacing fuel feed pumps, modifying the ash handling system, modifying the slag handling system, replacing windboxes and burners with a modified design, replacing the economizer header on boilers 1 and 3, replacing the entire economizer on boiler 2, adding additional sootblowers to the boilers, and adding additional sootblower compressor capacity. ALCOA constructed and operated these major modifications without obtaining prior authorization as required by the PSD program.